

Emergency Bill No. 28-01  
Concerning: Tenant  
Displacement - Revisions  
Revised: Dec. 4, 2001 Draft  
No. 7  
Introduced: July 31, 2001  
Enacted: December 4,  
2001  
Executive: December 13,  
2001  
Effective: January 15, 2002  
Sunset Date: None  
Ch. 32, Laws of Mont. Co. 2001

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the Request of the County Executive

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**AN EMERGENCY ACT** to:

- (1) apply the tenant displacement law to multi-family dwellings containing fewer units;
- (2) clarify when the right of first refusal applies;
- (3) extend the time for a tenant organization to exercise the right of first refusal;
- (4) restrict a tenant organization's ability to exercise the right of first refusal under certain conditions;
- (5) change the relocation assistance and extend the notice that an owner is required to provide to displaced tenants;
- (6) make conforming stylistic and technical changes; and
- (7) generally amend County law regarding tenant displacement.

By amending

Montgomery County Code  
Chapter 53A, Tenant Displacement

**Boldface**

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

\* \* \*

*Heading or defined term.*

*Added to existing law by original bill.*

*Deleted from existing law by original bill.*

*Added by amendment.*

*Deleted from existing law or the bill by amendment.*

*Existing law unaffected by bill.*

*The County Council for Montgomery County, Maryland approves the following Act:*

**Section 1. Chapter 53A is amended as follows:**

**53A-1. Legislative findings.**

The County Council finds that:

- (a) there is a continuing, severe shortage of low and moderate-income **rental housing** in the County;
- (b) **tenants** often experience significant hardship when they are displaced by **conversion** of **rental housing**; and
- (c) it is in the best interests of public health, safety, and welfare to regulate the **conversion** of **rental housing** in the County.

**53A-2. Definitions.**

- (a) **Convert** and **conversion** mean:
  - (1) (A) changing the use of **rental housing** to nonresidential use;
  - (B) demolishing at least one-third of the units in **rental housing** in a 12-month period;
  - (C) displacing **tenants** from at least one-third of the occupied units in **rental housing** in a 12-month period by:
    - (i) raising rents; or
    - (ii) preparing to rehabilitate the **rental housing**;or
  - (D) any other act that ends the use of the property as **rental housing**.
  - (2) **Conversion** does not include establishing a condominium or cooperative.
- (b) **Department** means the **Department** of Housing and Community Affairs.

- (c) **HOC** means the Montgomery County Housing Opportunities Commission.
- (d) **Owner** means a person holding **title** to **rental housing**.
- (e) **Rental housing** means a multiple-family dwelling, or a group of multiple-family dwellings operated as one entity, with a total of at least 4 rental units. **Rental housing** does not include a dwelling operated for a religious or charitable purpose.
- (f) (1) **Sale, sell, or selling** mean:
  - (A) transfer of **title** to **rental housing**;
  - (B) transfer in a 12-month period of a majority interest in the **owner**; or
  - (C) lease of **rental housing** for more than 7 years.(2) These terms do not include entering into a contract for the **sale** of **rental housing** that gives the County, **HOC**, or a **tenant organization** a right of first refusal under this Chapter.
- (g) **Tenant** means an individual who lives in a **rental housing** unit with the **owner's** consent and is responsible for paying rent to the **owner**.
- (h) **Tenant organization** means an association of **tenants** of **rental housing** that:
  - (1) represents **tenants** of at least 30 percent of the occupied units in the **rental housing**; and
  - (2) is certified by the **Department** according to Executive regulations.
- (i) **Title** means:

- (1) a legal or equitable ownership interest in **rental housing**;  
or
- (2) a legal, equitable, or beneficial interest in a partnership, limited partnership, corporation, trust, or other person who is not an individual, that has a legal or equitable ownership interest in **rental housing**.

**53A-3. Notice of sale.**

(a) *Notice required.*

- (1) Within 5 days after an **owner** enters into a bona fide contract of **sale** to **sell rental housing**, the **owner** must provide written notice of the **sale**:
  - (A) to each **tenant** in the **rental housing** by first class mail;
  - (B) posted in the public areas of the **rental housing**; and
  - (C) to the **Department** with a list identifying each **tenant** and the **tenant's** address.
- (2) The notice of **sale** must offer to **sell the rental housing** to any **tenant organization** under Section 53A-4, and include any other information required by Executive regulations.

- (b) *Tenant organization*. If there is no certified **tenant organization** for the **rental housing** when the notice of the **sale** is due under subsection (a), then a **tenant organization** may be formed to exercise the right of first refusal if the **Department** certifies the **organization** within 45 days after the **owner** provides notice to the **tenants** under subsection (a).

**53A-4. Right of first refusal to buy rental housing.**

- (a) *Right of first refusal.* An **owner** must offer the County, **HOC**, and any **tenant organization** the right to buy **rental housing** before **selling** the **rental housing** to another party, except as provided under Section 53A-5.
- (b) *Requirements for offer.* An offer required by subsection (a) must:
  - (1) be in writing;
  - (2) be sent by certified mail, return receipt requested, within 5 business days after:
    - (A) the execution of a bona fide contract of **sale**, for the County, HOC, and any existing **tenant organization**; or
    - (B) the **Department** certifies a **tenant organization**, for a new **tenant organization** formed under Section 53A-3(b);
  - (3) include substantially the same terms and conditions as a pending bona fide contract of **sale** from a third party to buy the **rental housing**; and
  - (4) remain open for:
    - (A) 60 days after it is received, for the County and **HOC**; and
    - (B) 90 days after it is received by any **tenant organization**, including a new **tenant organization** formed under Section 53A-3 (b).
- (c) *Information and inspection.* The **owner** must give the County, **HOC**, and any **tenant organization**:

- (1) any information about the **rental housing** relevant to exercising the right of first refusal, such as architectural and engineering plans and specifications, and operating data; and
- (2) access to the **rental housing** to inspect the property and conduct reasonable tests at reasonable times after reasonable notice.

The County, **HOC**, and any **tenant organization** must pay the **owner** a reasonable deposit for any architectural and engineering plans that the **owner** provides. The **owner** must refund the deposit when the plans are returned to the **owner**. The County Executive must issue regulations to implement this subsection.

(d) *Exercise of right of first refusal.*

- (1) The County, **HOC**, or a **tenant organization** may exercise the right of first refusal by accepting the offer within the applicable period under subsection (b) (4). The County and **HOC** may accept an offer to buy **rental housing** in a municipality only if the municipality approves.
- (2) The **owner** must **sell** the **rental housing** under the right of first refusal if the acceptance includes substantially the same terms and conditions contained in the **owner's** bona fide contract of **sale** with the third party, including any contract term that provides for a bona fide real estate commission payable to an independent broker.

Notwithstanding this general requirement or any term of the contract, the County, **HOC**, or a **tenant organization**

may condition its acceptance on obtaining financing at any time before the deadline in paragraph (3) for completing the **sale**.

- (3) The **owner** and the County, **HOC**, or **tenant organization** must complete a **sale** under this subsection within 180 days after the County, **HOC**, or **tenant organization** receives the **owner's** offer unless the **owner** agrees to extend the 180-day period.
- (4) Before a **tenant organization** completes a sale under paragraph (3), a majority of all of the **tenants** must ratify the purchase.
- (5) The right of first refusal applies in the following order of priority:
  - (A) the County;
  - (B) **HOC**; and
  - (C) any **tenant organization**.
- (6) The Executive must issue regulations that establish procedures and guidelines for exercising the County's right of first refusal.
- (e) *Expiration of right of first refusal.* If the County, **HOC**, and any **tenant organization** do not exercise their rights of first refusal within the applicable period under subsection (b)(4), the **owner** may **sell** the **rental housing** to the third party buyer under substantially the same terms and conditions offered to the County, **HOC**, and any **tenant organization**.
- (f) *Immunity.* The County, **HOC**, and any **tenant organization** are not liable for any damages incurred by the **owner**, a third-party

buyer, a **tenant**, or any other person in connection with a decision to exercise or not exercise a right of first refusal under this Section.

**53A-5. Sales not requiring right of first refusal.**

(a) *Agreement not to **convert**.*

(1) An **owner** may **sell rental housing** without providing any right of first refusal under Section 53A-4 if the

**Department** approves a written agreement that:

- (A) prohibits the buyer from **converting** the **rental housing** for at least 5 years after the **sale**;
- (B) the **Department** received from the prospective buyer at least 30 days before the **sale**; and
- (C) except as provided in paragraph (2)(B), requires the buyer to follow the voluntary rent increase guidelines published annually under Section 29-53 during:
  - (i) the first 3 years of the agreement, for all **tenants** who resided in the **rental housing** when the **Department** approved the agreement; and
  - (ii) the last 2 years, for each of these **tenants** who qualifies as a low- or moderate-income **tenant** under **Department** regulations.

(2) The **Department** may:

- (A) approve or reject an agreement with the buyer under this subsection only after considering the:



- (i) physical condition of the **rental housing**, including any rehabilitation necessary to correct dangerous defects;
  - (ii) **tenants'** ability to afford rent increases; and
  - (iii) need to preserve low-and moderate-income **rental housing** in the County;
- (B) allow the buyer to increase rents above the limits in paragraph (1)(C) only when the **Department** decides that a greater increase is justified by:
  - (i) unforeseen circumstances beyond the buyer's control; or
  - (ii) necessary rehabilitation to the **rental housing**.
- (3) The **Department** annually must verify the buyer's compliance with the rent increase limits required by this subsection.
- (b) *Other exceptions.* An **owner** also does not have to provide a right of first refusal for a **sale**:
  - (1) under the terms of a bona fide mortgage or deed of trust;
  - (2) to a mortgagee in lieu of foreclosure;
  - (3) under a court order;
  - (4) from one co-tenant to another co-tenant by operation of law;
  - (5) under a will or intestate distribution;
  - (6) to the State or a local government;
  - (7) of a minority **title** interest;
  - (8) of a mobile home park; or

- (9) of **rental housing** for which the initial building permit was issued after February 5, 1981.

**53A-6 . Conversion of rental housing.**

- (a) *Notice of **conversion**.* An **owner** must not **convert rental housing** unless the **owner** notified each **tenant** in the **rental housing** at least 120 days before **converting** the building. Before renting to a prospective **tenant** during this 120-day period, the **owner** must notify the prospective **tenant** about the **conversion**.
- (b) *Termination of lease.* A **tenant** who receives a notice of **conversion** may terminate a lease without penalty at least 30 days after notifying the **owner** in writing.
- (c) ***Tenant** relocation assistance.* The **owner** must pay a **tenant** relocation assistance equal to 2 months' rent if the **tenant** moves out of the **rental housing** within 180 days after the **tenant** received the notice of **conversion** required by subsection (a). The **owner** must pay the relocation assistance not more than 10 days after the **owner** received the **tenant's** notice of termination under subsection (b).

**53A-7. Certificate of compliance.**

The **Department** must issue a certificate of compliance for **rental housing** to the **owner**, the buyer, or any other interested party, in a form appropriate for recordation in the land records, when the **Department** determines that the requirements of this Chapter have been satisfied. The certificate is conclusive evidence of compliance with this Chapter.

**53A-8. Complaints.**

Any person harmed by an **owner**, buyer, **tenant organization**, or any other person who violates this Chapter may file a written complaint with the **Department**.

**53A-9. Enforcement.**

- (a) The **Department** may enforce this Chapter by:
  - (1) investigating any alleged violation;
  - (2) issuing a summons or subpoena to compel the attendance of a person or the production of documents or other evidence;
  - (3) enjoining a violation;
  - (4) revoking a rental license issued under Chapter 29;
  - (5) reporting a violation to any other appropriate government agency;
  - (6) informal conciliation between a complainant and an alleged violator;
  - (7) dismissing a complaint when the Director of the **Department** determines that there is insufficient evidence of a violation;
  - (8) obtaining injunctive or other appropriate judicial relief, such as an order to:
    - (A) require compliance with a summons or a subpoena;
    - (B) require an alleged violator or witness to attend a **Department** meeting or other proceeding concerning the alleged violation;
    - (C) require production of documents or other evidence;
    - (D) require transfer of documents or other evidence to the Court; or

- (E) prohibit the destruction of documents or other evidence;
- (9) recovering costs and fees of an investigation or a lawsuit if the **Department** finds a violation occurred, and prevails in any appeal;
- (10) ordering any appropriate financial, legal, or equitable relief to a **tenant** or **tenant organization** injured by a violation of this Chapter;
- (11) any other applicable enforcement action that the **Department** could take to enforce a violation of Chapter 11 (Consumer Protection) or Chapter 29 (Landlord-Tenant Relations), under the procedure provided in the respective Chapter;
- (12) developing, conducting, or assisting in educational and information programs concerning the requirements of this Chapter; and
- (13) adopting regulations to implement this Chapter.
- (b) Any **sale** of **rental housing** in violation of this Chapter is void.
- (c) This Chapter does not limit any other legal right available to a **person**.

**53A-10. Penalties.**

A violation of this Chapter or a regulation adopted under this Chapter is a class A violation. A violation may be punished as a separate violation for each unit in the **rental housing** affected by the violation for each day the violation exists.

**53A-11. Annual reports to the Council.**

By February 1 of each year, the County Executive must report to the Council on activities under this Chapter for the prior calendar year, including:

- (a) any offer of a right of first refusal received by the County;
- (b) any agreement not to **convert** that the Department approved; and
- (c) **conversion of rental housing** in the County.

**Sec. 2. Emergency Effective Date.**

The Council declares that an emergency exists and that this legislation is necessary for the immediate protection of the public health and safety. This Act takes effect on January 15, 2002.

*Approved:*

/S/

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Steven A. Silverman, President, County Council

Date

*Approved:*

/S/

December 13, 2001

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Douglas M. Duncan, County Executive

Date

*This is a correct copy of Council action.*

/S/

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Mary A. Edgar, CMC, Clerk of the Council

Date